



FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 390

RIN 3064-AF36

Removal of Transferred OTS Regulations Regarding Application Processing Procedures of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NPR), the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove certain regulations transferred to the FDIC from the Office of Thrift Supervision (OTS) in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations generally concern the supervision and governance of State savings associations, including the application processing procedures for certain applications, notices and filings by State savings associations. In addition to the removal of our regulations, the FDIC proposes to make technical changes to our regulations that do not currently apply to State savings associations. Following the rescission, the filing regulations pertaining to State savings associations and all other FDIC-supervised institutions will be substantially the same. The FDIC invites comments on all aspects of this proposed rulemaking.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by RIN 3064-AF36, by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.
- **Email:** Comments@fdic.gov. Include RIN 3064-AF36 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure.

Please note: All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Donald Hamm, Special Advisor, (202) 898-3528, dhamm@fdic.gov; or Shelli Coffey, Review Examiner, (312) 382-7539, scoffey@fdic.gov, Risk Management Supervision; Andrew B. Williams II, Counsel, (202) 898-3591, andwillimas@fdic.gov, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the proposed rule is to remove unnecessary and duplicative regulations in order to simplify and improve the public's understanding of the rule, and to promote parity between State savings associations and State nonmember banks by applying the same filing requirements to both classes of institutions. Thus, as further detailed in this section, the FDIC is proposing to rescind and remove, from the Code of Federal Regulations (CFR), 12 CFR part 390, subpart F (subpart F).

As discussed below, the FDIC proposes to make technical changes to certain sections of part 303. The rescission of subpart F, with the accompanying revisions to 12 CFR 303, would simplify and streamline the FDIC's regulations by removing unnecessary provisions that are adequately provided for in other existing statutes and regulations.

II. Background

A. *The Dodd-Frank Act*

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹ Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,² the powers, duties, and functions formerly performed by the

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² Codified at 12 U.S.C. 5411.

OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act³ provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,⁴ on June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the *Federal Register* on July 6, 2011.⁵

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁶ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)⁷ and other laws as the "appropriate Federal

³ Codified at 12 U.S.C. 5414(b).

⁴ Codified at 12 U.S.C. 5414(c).

⁵ 76 FR 39247 (July 6, 2011).

⁶ Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

⁷ 12 U.S.C. 1811 *et seq.*

banking agency” or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act⁸ revised the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act⁹ to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

As noted, on July 14, 2011, operating pursuant to this authority, the FDIC’s Board of Directors issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the FDIC Board reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the *Federal Register* on August 5, 2011.¹⁰ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.¹¹

B. 12 CFR Part 516 – Application Processing Procedures

A subset of the regulations transferred to the FDIC from the OTS concern application processing procedures. The OTS regulations, formerly found at 12 CFR part 516, 516.1 through 516.290, were transferred to the FDIC with only nomenclature

⁸ Codified at 12 U.S.C. 5412(c)(1).

⁹ 12 U.S.C. 1813(q).

¹⁰ 76 FR 47652 (Aug. 5, 2011).

¹¹ See 76 FR 47653.

changes and now comprise part 390, subpart F. Each provision of part 390, subpart F is discussed in Part III of this Supplementary Information section, below.

C. *Part 390, Subpart F—Application Processing Procedures*

The FDIC has conducted a careful review and comparison of subpart F and other Federal regulations and statutes concerning Application Processing Procedures of State savings associations. As discussed in Part III of the Proposal section, the FDIC proposes to rescind subpart F because the FDIC considers the provisions contained in subpart F to be unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically part 303.

D. *Part 303, Filing Procedures*

The FDIC also proposes to make technical changes in certain sections of part 303, subparts A, K, and M. The proposed revisions would make those sections applicable on their terms to State savings associations.

III. The Proposal

Section 316(b)(3) of the Dodd-Frank Act in pertinent part, provides that the regulations of the former OTS, as they apply to State savings associations, will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law.¹² Consistent with the FDIC's stated intention to evaluate transferred OTS regulations before taking action on them, the FDIC conducted a careful review of subpart F and related Federal statutes, regulations, and statements of policy relevant to subordinate organizations of State savings associations. As discussed in this Proposal section, the FDIC proposes to rescind and remove subpart F in its entirety,

¹² 12 U.S.C. 5414(b)(3).

because the provisions contained there are duplicative of substantially similar FDIC statutory or regulatory provisions, or guidance that produce substantially the same supervisory results.

Part 303 of the FDIC Rules and Regulations (12 CFR 303) provides a framework for filing requirements for various applications, notices, and requests (collectively, “filings” as defined in § 303.2(s)) (12 CFR 303.2(s)). Subpart A of part 303, Rules of General Applicability, prescribes the general procedures for submitting filings to the FDIC that are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants, and interested parties during the process of considering a filing, including public notices and comment when required. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)) for matters subject to expedited processing. Specific filings are detailed in subpart B through subpart M of part 303.

IV. Section-by-Section Analysis – Rescission of Subpart F

There are existing statutes and regulations that describe the application processing procedures of State savings associations, obviating the need for a new regulation, but requiring amendment of existing regulations upon rescission of subpart F. Accordingly, the FDIC proposes that § 390.100 through § 390.135, subpart F, be rescinded as unnecessary, redundant of, or otherwise duplicative of the provisions of law delineated in part 303, each discussed individually below.

A. Section 390.100 – What does this subpart do?

Section 390.100 states that subpart F explains the FDIC’s procedures for processing applications, notices, or filings for State savings associations under parts 390

and 391, and identifies several requests or applications that were not intended to be covered by subpart F. In addition, the section states that, where an FDIC regulation provides some of the application processing procedures or timeframes, the FDIC will apply the regulations in subpart F to the extent necessary to process the application.

Existing statutes and regulations that are applicable to insured State institutions, of which State savings associations are a subset, already “prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing.”¹³ Moreover, subpart F only applies to filings under parts 391 and 390 of the FDIC regulations. Part 391 and several subparts of part 390 have been rescinded, and the FDIC is in the process of rescinding the remainder of part 390. Therefore, the FDIC considers § 390.100 unnecessary and proposes that it be rescinded.

B. *Section 390.101 – Do the same procedures apply to all applications under this subpart?*

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. Part 303, §§ 303.2(r) and 303.11(c), as well as the substantive subparts of part 303, when applicable, specify the criteria and conditions for expedited and standard processing, the removal of filings from expedited processing, and extension of time periods. Part 303 does not address expedited and standard processing in precisely the same way as subpart F, but generally addresses substantially similar concepts as to the type of treatment afforded to a matter type and

¹³ 12 CFR 303.1.

under what circumstances, and the procedures to be followed. Therefore, the FDIC considers § 390.101 unnecessary and duplicative, and proposes that it be rescinded.

C. *Section 390.102 – How does the FDIC compute time periods under this subpart?*

Section 390.102 addresses computation of time periods for State savings associations. Computation of time under part 303 is contained in § 303.4 and, though not worded in the same way, computes time periods in a substantially similar manner. Therefore, the FDIC considers § 390.102 unnecessary and proposes that it be rescinded.

D. *Section 390.103 – Must I meet with the FDIC before I file my application?*

Section 390.103 addresses pre-filing meetings for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed, as appropriate, in the Applications Procedures Manual (APM) under Notice of Acquisition of Control (refer to pages 5.5-6 of the APM), which can be referenced at <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-05-changeincontrol.pdf>. As a result, the FDIC considers § 390.103 unnecessary and proposes that it be rescinded.

E. *Section 390.104 – What information must I include in my draft business plan?*

Section 390.104 addresses business plan requirements. Part 303 does not require a specific format for a business plan submitted with applications; nor do the FDIC's regulations address specific business plan content requirements. Business plans, when required or requested, are generally addressed through pre-filing communications with the applicant. Information regarding business plan content is available in the interagency

charter and federal deposit insurance application form, a valuable resource for determining business plan requirements, found at www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf. The Handbook for Organizers – Applying for Deposit Insurance includes sections on developing a business plan and business plan content, and can be referenced at www.fdic.gov/resources/supervision-and-examinations/bank-applications/depositinsurance/. As a result, the FDIC considers § 390.104 unnecessary and proposes that it be rescinded.

F. *Section 390.105 – What type of application must I file?*

Section 390.105 addresses the scope and form for expedited and standard processing, directs the applicant to sources for required information, including the substantive matter provisions of parts 390 and 391, and permits requests to waive information requirements. The FDIC’s part 303 operates in a similar manner in many respects. Section 303.3 addresses the form for filings, generally, and is supplemented by the appropriate subparts of part 303 and specific filing requirements, as appropriate. The subparts are based on the type of filing, and address the form of filing. The part 303 regulations also provide for expedited and standard processing, as appropriate. The subparts specify whether a matter receives expedited processing.¹⁴

In addition, § 390.105 addresses waiver requests for State savings associations. Under § 303.12, The FDIC Board may waive the applicability of any regulation in Title 12, Chapter III, including part 303. In addition, various sections within part 303

¹⁴ See e.g. 12 CFR 303.122 and 12 CFR 362.4(b)(5).

applicable to savings associations also address waiver requests, including: §§ 303.85(a)(2), 303.102(c)(1), and 303.102(c)(2).

In light of part 303's treatment of the same substantive areas, the FDIC considers § 390.105 unnecessary and proposes that it be rescinded.

G. *Section 390.106 – What information must I provide with my application?*

Section 390.106 addresses content of filings for State savings associations, and advises applicants that they may obtain relevant information from the appropriate FDIC region. The section also requires the applicant to conform to specific form conventions for the filing and specifies inclusion of all exhibits and other pertinent documents with the original and copies.

As indicated earlier, unlike § 390.106, the FDIC has several regulations that specify information a filing should contain. Additionally, rather than requiring that filings be submitted in a certain way, § 303.3 of the FDIC's regulations provides that instructions for submitting filings may be obtained from any FDIC regional director.

The FDIC considers the part 303 processes to provide the applicant with the appropriate requirements for a filing while permitting flexibility as to form. Accordingly, the FDIC considers § 390.105 unnecessary and proposes that it be rescinded.

H. *Section 390.107 – May I keep portions of my application confidential?*

Section 390.107 addresses application confidentiality for State savings associations and identifies certain information that will not be considered confidential. Section 303.8(b) identifies certain information that will generally be treated as confidential, and provides that the applicant may request that information be treated as

confidential.¹⁵ The section provides that the FDIC may determine on its own initiative that information should be treated as confidential. Therefore, the FDIC considers § 390.107 unnecessary and proposes that it be rescinded.

I. *Section 390.108 – Where do I file my application?*

Section 390.108 provides locations to use in filing applications, specifically providing regional office addresses. Section 303.3 directs applicants to transmit filings to the appropriate regional office unless specifically stated otherwise. Section 303.2 defines the appropriate office, while the specific addresses are maintained on the FDIC’s public website.¹⁶ Therefore, the FDIC considers § 390.108 unnecessary and proposes that it be rescinded.

J. *Section 390.109 – What is the filing date of my application?*

Section 390.109 explains the means to determine an application’s filing date, the date from which time periods for action by the FDIC and applicant begin. Under § 303.4, processing time periods are computed, unless otherwise provided, from the date on which “a substantially complete filing is received by the FDIC or the day after publication begins.” Because part 303 provides an appropriate and consistent method for determining the date on which the filing processing period begin, the FDIC considers § 390.109 unnecessary and proposes that it be rescinded.

K. *Section 390.110 – How do I amend or supplement my application?*

Section 390.110 discusses amending or supplementing an application. It requires the filing of amendments or supplemental information at the appropriate FDIC regional office, along with the number of copies required by § 390.108. It also requires that the

¹⁵ See also, generally, 12 CFR part 309.

¹⁶ Part 303 does not require that certain filings be made or provided by the applicant to FDIC headquarters.

amendment or supplemental information meet the requirements contained in § 390.106(b).

The FDIC has no similar rule under part 303, but believes that the rule is unnecessary because, as noted in the APM, the FDIC's practice has been to allow supplemental filings to be submitted to the appropriate FDIC regional office. This approach allows appropriate flexibility based on the application. Accordingly, the FDIC proposes that § 390.110 be rescinded.

- L. *Section 390.111 – Who must publish a public notice of an application;*
 Section 390.112 – What information must I include in my public notice;
 Section 390.113 – When must I publish the public notice; Section 390.114
 – Where must I publish the public notice; Section 390.115 – What
 language must I use in my publication?

Sections 390.111 through 390.115 address public notice requirements, and apply when FDIC regulations require an applicant to follow the public notice procedures.¹⁷ Public notice requirements are encompassed in part 303 of the FDIC regulations, including in § 303.7 and throughout various subparts and sections of part 303 such as those for deposit insurance in § 303.23, branches (domestic and foreign) in §§ 303.44 and 303.184(c), mergers in § 303.65, and change in bank control in § 303.87. Section 303.7 lists the filings that require public notices.

Section 390.112 addresses the information that is required to be contained in public notices. A comparison of §§ 390.112 and 303.7(c) demonstrates that the two provisions are virtually identical. Section 390.113 requires that a public notice be

¹⁷ 12 CFR 390.111.

published no earlier than seven days before and no later than the date of filing of the application. Unlike § 390.113, § 303.7(a) provides that public notices will be given pursuant to the appropriate subpart for the type of application involved. In addition, unlike § 390.113, time intervals at which public notice must be given for an application vary with the specific subparts of part 303. The FDIC prefers the degree of specificity contained in the public notice provisions in part 303 over the general public notice requirement contained in § 390.113.

Both § 390.114 of subpart F and part 303 require providing the public notice in a newspaper of general circulation in the communities indicated in the particular rule. Section 390.115 requires that public notices be published in a newspaper printed in the English language and, upon FDIC determination, simultaneous publication in other languages. The FDIC does not have a similar procedural rule, however, the FDIC's practice is consistent with § 390.115. The FDIC believes, however, that this subject is better addressed on a case-by-case basis between the applicant and the appropriate FDIC regional office.

Based on the above analysis, the FDIC considers §§ 390.11, 390.112, 390.114 and 390.115 unnecessary and proposes that they be rescinded.

M. *Section 390.116 – Comment procedures; Section 390.117 – Who may submit a written comment; Section 390.118 – What information should a comment include; Section 390.119 – Where are comments filed; Section 390.120 – How long is the comment period?*

Sections 390.116 through 390.120 address the procedures to submit public comments. Under part 303, public notice procedures are found at § 303.9 and throughout

various subparts and sections of part 303, specifically for deposit insurance in § 303.23, branches (domestic and foreign) in §§ 303.44 and 303.184(c), mergers in § 303.65, and for change in bank control in § 303.87.

Section 390.117 permits any person to submit a written comment supporting or opposing an application. Section 303.9(a) is substantially the same.

Section 390.118(a) specifies the type of information that should be contained in a comment. Section 390.118(b) allows a commenter to include in its comment a request for a meeting under § 390.122 and, as part of the request, requires a description of the nature of the issues or facts to be discussed and why written submissions are insufficient. The FDIC has no provision in part 303 similar to § 390.118; however, the FDIC believes the benefit, if any, is minimal and that the potential burden on commenters of such a detailed rule may outweigh any benefit. The FDIC is also concerned that such a rule may discourage the filing of comments.

The regulations in subpart F and part 303 regarding where comments should be filed are virtually identical.

Section 390.120 generally requires that comments be filed within 30 calendar days after the publication of the initial public notice and provides the FDIC may consider late-filed comments if it determines that the comment will assist in the disposition of the application. The FDIC's part 303 regulations place deadlines for public comments in the relevant subpart for the particular type of filing at issue. Based on the type of filing involved, public comments are generally solicited for 15-30 days.¹⁸ The FDIC believes

¹⁸ See e.g. 12 CFR 303.23(a) (30 days following date of publication); 12 CFR 303.44(b) (within 15 days after the date of the last publication required by the section); and 12 CFR 303.65(d) (30 days after the first publication of the notice).

that the public comment period required by § 390.120 is duplicative, in substance, of the regulations contained in part 303. In addition, the FDIC believes the comment periods provided in part 303 are preferable to the single comment period contained in § 390.120 because they are better calibrated to the types of filings that are at issue.

Based on the above, the FDIC considers §§ 390.116, 390.117, 390.118, 390.119, and 390.120 to be unnecessary and proposes that they be rescinded.

- N. *Section 390.121 – Meeting procedures; Section 390.122 – When will the FDIC conduct a meeting on an application; Section 390.123 – What procedures govern the conduct of the meeting; Section 390.124 – Will FDIC approve or disapprove an application at a meeting; Section 390.125 – Will a meeting affect application processing time frames?*

Sections 390.121 through 390.125 contain meeting procedures for filings. Section 390.122, addresses the FDIC authority to call a meeting, limitation of the issues to be discussed, and notice of the meeting to the commentators and applicants. Section 390.123 allows the FDIC to conduct a meeting in any format and states the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC's Rules of Practice and Procedure do not apply to meetings under the section. Section 390.124 indicates that the FDIC will not approve or deny an application at a meeting under §§ 390.121 through 390.125. Section 390.125 provides that, if a meeting is held, the FDIC may suspend all time frames for determining that the application is substantially complete and the application approval time frames in §§ 390.126 through 390.135. Time periods resume when the FDIC determines that a record

has been developed that sufficiently supports a determination on the issues considered during the meeting.

Meetings are addressed generally in FDIC regulations found at §§ 303.6 and 303.10. The FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Section 303.10(l) is less detailed than § 390.122 in certain respects; however, the FDIC prefers the level of flexibility it provides to the FDIC, applicants, and other interested parties. Section 303.10 distinguishes between hearings and informal proceedings. Generally, a hearing is a more formal proceeding and is usually only granted if the FDIC determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest. An informal proceeding, under the rule, is a less formal proceeding, and § 303.10(l) provides that it may take any form. Like § 390.123(b), § 303.10(h)(3) provides that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC's Rules of Practice and Procedure do not apply to hearings. Section 303.10(l) does not provide authority to approve or disapprove a filing at an informal proceeding (similar to § 390.124).

The FDIC has no similar rule in its part 303 regulations to § 390.125 and does not believe one is necessary because under part 303, unlike the former OTS regulations, processing time frames run from the date a substantially complete application is received, not from the date an application is filed. Because the processing time frames under the part 303 regulation run from the date that the FDIC determines the application is

substantially complete, there is no need to stop and restart the processing time in connection with a meeting.

Based on the analysis above, the FDIC considers §§ 390.121, 390.122, 390.123, 390.124, and 390.125 to be unnecessary and proposes that they be rescinded.

O. *Section 390.126 – If I file a notice under expedited treatment, when may I engage in the proposed activities?*

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. Expedited processing and related matters are encompassed in FDIC regulations found at § 303.11(c) and, as applicable, the substantive subparts of § 303, such as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC considers § 390.126 duplicative and unnecessary, and proposes that it be rescinded.

P. *Section 390.127 – What will the FDIC do after I file my application and Section 390.128 – If the FDIC requests additional information to complete my applications, how will it process my application?*

Sections 390.127 and 390.128 address application completeness, including a sequence of filing, FDIC response, requests for additional information, waiver and extension requests, and the consequences of various responses by the applicant and the FDIC. The procedures for processing a filing under part 303, while essentially addressing the same issues, are simpler and easier to navigate than those of § 390.127. That is due, in large part, to the use of the substantially complete filing procedure of part

303, which eliminates the necessity for the complex sequence of actions in subpart F. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC considers §§ 390.127 and 390.128 unnecessary and proposes that they be rescinded.

Q. *Section 390.129 – Will the FDIC conduct an eligibility examination?*

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. The FDIC does not believe that a specific eligibility examination provision is needed. Under § 303.6, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. The FDIC utilizes field investigations when processing deposit insurance applications, and may conduct eligibility examinations when processing certain federal to state conversion applications that are filed pursuant to 12 U.S.C. 1464(i)(5). Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC considers § 390.129 unnecessary and proposes that it be rescinded.

R. *Section 390.130 – What may the FDIC require me to do after my application is deemed complete?*

Section 390.130(a) addresses FDIC requests for additional information from State savings associations in order to resolve or clarify issues presented by the filing. Section 390.130(b) provides that if the FDIC determines that a major issue of law or a change in circumstances arose after the application was filed, and the issue or change in circumstances substantially affects the application, the FDIC may notify the applicant

that the application is deemed incomplete, and require the applicant to submit additional information under the procedures contained in § 390.128. The FDIC also may, to the extent necessary, require the applicant to publish a new notice under § 390.131.

The FDIC's part 303 regulations authorize the FDIC to request additional information from an applicant until the time it makes a decision on an application, and delays the beginning of the processing period until receipt of a substantially complete filing, and the FDIC has not found it necessary to incorporate the § 390.130 concept into a regulation. The FDIC believes that the possibility of a major change in law or circumstances following the acceptance of a filing as substantially complete does not warrant coverage by a special regulation and that those issues may be addressed under part 303 in its current form.

The FDIC considers § 390.130 unnecessary and proposes that it be rescinded.

S. *Section 390.131 – Will the FDIC require me to publish a new public notice?*

Section 390.131 sets forth the circumstances under which the FDIC may require a State savings association applicant subject to the publication requirements to publish new public notices. Section 303.7(f) states the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. Accordingly, the FDIC considers § 390.131 unnecessary and proposes that it be rescinded.

T. *Section 390.132 – May the FDIC suspend processing of my application?*

Section 390.132 authorizes the FDIC to suspend an application by a State savings association for the reasons stated therein. Part 303 has no similar provision. However,

the FDIC believes that situations envisioned by § 390.132 can either be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Accordingly, the FDIC considers § 390.132 unnecessary and proposes that it be rescinded.

U. *Section 390.133 – How long is the FDIC review period*

Under § 390.33(a), the applicable FDIC review period is 60 days after the date the application is deemed complete. Section 390.133(b) provides that, if an applicant submits more than one application in connection with a proposed action, or if two or more applicants submit related applications, the review period for all applications would be the time frame for the application with the longest review period. Section 390.133(c) addresses extensions of the review period. Section 390.133(c)(1) allows the FDIC to extend the review period for up to 30 calendar days for any reason. To do so, the FDIC must notify the applicant in writing of the extension before the end of the applicable review period. Also, under § 390.133(c)(2), the FDIC can extend the review period of any application if the application presents a significant issue of law or policy that requires additional time to resolve and must notify the applicant in writing. The FDIC must issue its written extension before the review period expires, including any extension granted under paragraph (c)(1) of the section.

The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. The processing time period for notices and applications, which varies by type of filing, may be extended for

most matters under part 303 processing. Section 303.11(d) states that, when the FDIC is considering related transactions, one or more of which have expedited processing, the longest processing time will govern all related transactions. The FDIC prefers the review time frames specified in the appropriate subparts of part 303 for each particular filing, rather than a single time frame for all filings, given the varying significance and complexity of the various types of filings. Therefore, the FDIC considers § 390.133 unnecessary and proposes that it be rescinded.

V. *Section 390.134 – How will I know if my application has been approved?*

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the applicant, in writing, of its decision. If the FDIC does not act under paragraph (a)(1) of the section, the application is approved. However, for this section to be applicable, the FDIC must fail to extend the review period as allowed under § 390.133(c).

In comparison to § 390.134, § 303.11 provides that the FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial. Contrary to § 390.134, § 303.11 does not include an automatic approval for an application if the FDIC fails to approve or deny it. However, the substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. In addition, the FDIC does not consider “automatic”

or “default” approvals (other than as already specified in the part 303 regulations) to be an appropriate method for making decisions on applications.

Based on the analysis above, the FDIC considers § 390.134 unnecessary and proposes that it be rescinded.

W. *Section 390.135 – What will happen if the FDIC does not approve or disapprove my application within two calendar years after the filing date?*

Section 390.135 addresses withdrawal if an application is not approved or denied within two calendar years. The FDIC will notify the applicant in writing that the application is withdrawn under those circumstances, unless the FDIC determines that the applicant is actively pursuing a final FDIC determination.

FDIC regulations do not address withdrawal if an application is not acted on within two calendar years.¹⁹ The Applications Overview section of the APM (refer to pages 1.1-3), referenced at <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-01-01-overview.pdf>, states that the FDIC’s goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. It is also, generally, the FDIC’s practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. For all filings, whether for banks or savings associations, the FDIC has established timeframes for processing applications that are consistent with statutes, regulations, or internal business rules for expedited and standard processing. These timeframes have been issued

¹⁹ Section 343(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires the federal banking agencies to take final action on applications before the end of the one-year period beginning the day after a substantially complete filing is received. Section 343(b) of the Riegle Act provides that the applicant may grant a waiver of this one-year limitation. Since the Riegle Act is not prescribed in FDIC Regulations, it is not material for purposes of part 390, subpart F.

publicly through Financial Institution Letter 81-2018, posted to the FDIC's public website and incorporated into the APM under the Applications Overview (refer to pages 1.1-3), which is referenced at <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-01-01-overview.pdf>.

The FDIC considers § 390.135 to be unnecessary and proposes that it be rescinded.

V. Revision of Certain Sections of Part 303

A. Section 303.7 – Public notice requirements

Section 5 of the FDI Act,²⁰ generally and in part, provides that any depository institution engaged in the business of receiving deposits other than trust funds, upon application to and examination by the FDIC and approval by its Board of Directors, may become an insured depository institution. The term "depository institution" means any bank or savings association pursuant to section 3(c)(1) of the FDI Act.²¹ Subpart B--- Deposit insurance, of part 303 of the FDIC regulations, sets forth the procedures for applying for deposit insurance by certain applicants, including for a proposed depository institution under section 5 of the FDI Act, and applies to savings associations.²² Section 303.23(a) of subpart B states that, in addition to other requirements, the applicant "shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located."

Subpart F of part 390 of the FDIC regulations addresses public notice requirements, stating that §§ 390.111 through 390.115 apply whenever a FDIC regulation

²⁰ 12 U.S.C. 1815.

²¹ 12 U.S.C. 1813(c)(1).

²² 12 CFR 303.20.

requires an applicant to follow the public notice procedures.²³ The FDIC proposes to rescind §§ 390.111 through 390.115 because part 303 substantively addresses the same requirements, including, for deposit insurance applications, §§ 303.7, subpart A, and 303.23, subpart B.

Section 303.7 of the FDIC regulations, a part of subpart A---Rules of General Applicability, addresses public notice requirements for filings with respect to mergers, changes in control, and requests for deposit insurance. With one exception, § 303.7 makes no distinction between banks and savings associations. However, § 303.7(c)(1)(i) states, in part: “[i]n the case of an application for deposit insurance for a *de novo bank* (emphasis added), include the names of all organizers or incorporators.” In order to clarify that the provision is applicable to savings associations, consistent with section 5 of the FDI Act and part 303, including subpart B---Deposit Insurance, and to make the requirement consistent for both types of depository institutions, the FDIC proposes to revise the provision to replace “bank” with “depository institution,” a term used elsewhere in the section.

B. *Section 303.15 - Certain limited liability companies deemed incorporated under State law*

Pursuant to section 5 of the FDI Act, the FDIC may approve deposit insurance for certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be “incorporated under the laws of any State.”²⁴ That requirement effectively limited the approval of deposit insurance to State banks chartered under the traditional corporate form, despite the creation and

²³ 12 CFR 390.111.

²⁴ 12 U.S.C. 1813(a)(2).

increased use of limited liability entities other than corporations, such as limited liability companies (LLCs). Section 303.15(a) of the FDIC regulations was promulgated to provide that a bank chartered as an LLC under State law would be deemed “incorporated” if it met four requirements, thus permitting the entity to be eligible to apply and be approved for deposit insurance.²⁵ To be deemed incorporated, the LLC must possess the four traditional corporate characteristics of perpetual succession, centralized management, limited liability, and free transferability of interests.²⁶

Section 303.15(b) further provides that, for purposes of the FDI Act and the FDIC regulations, the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” for banks chartered as LLCs, shall encompass or have substantially the same meaning as those terms have for banks chartered as corporations. The definition of State savings association under the FDI Act, which uses the phrase “organized and operating according to the laws of the State” instead of “incorporated,” does not limit State savings associations to the corporate charter form (absent a state requirement).²⁷ However, in order to clarify that the terms in § 303.15(b) apply to savings association chartered as LLCs as they do for banks so chartered, the FDIC proposes to revise references to “bank” in § 303.15(b) to “depository institution.” The impact of the revisions would be to make the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” with respect to savings associations chartered as LLCs, encompass or have substantially the

²⁵ See 68 FR 7308, February 13, 2003.

²⁶ 12 CFR 303.15(a)(1) through (4). See also, 68 FR 7308.

²⁷ 12 U.S.C. 1813(b)(3).

same meaning with respect to savings associations chartered as LLCs as for those chartered as corporations.

C. Subpart K---Prompt Corrective Action: *Section 303.204 – Applications for acquisitions, branching, and new lines of business*

Section 303.205 – Applications for bonuses and increased compensation for senior executive officers

Part 303 of the FDIC’s regulations includes procedures to implement the filing requirements for certain activities or transactions relative to undercapitalized or weaker depository institutions, and implements certain elements of section 38 of the FDI Act.²⁸ Section 38 applies to all insured depository institutions. Among other things, section 38 generally prohibits an insured depository institution, without application and approval, from engaging in acquisitions, branching, or new lines of business, if the institution is undercapitalized or weaker, significantly undercapitalized, or critically undercapitalized.²⁹ It also prohibits an insured depository institution, without application and approval, from payment of bonuses or increased compensation to senior executive officers, if the institution is significantly or critically undercapitalized, or is undercapitalized and has failed to submit or implement an acceptable capital restoration plan.³⁰

Sections 303.204 and 303.205 of the FDIC regulations implement the above provisions of section 38. Section 303.204 requires any insured State nonmember bank

²⁸ 12 U.S.C. 1831o.

²⁹ See 12 U.S.C. 1831o(e)(4).

³⁰ See 12 U.S.C. 1831o(f)(4). 12 U.S.C. 1831o(f) contains additional, discretionary restrictions that may be imposed by a financial regulator.

and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. This section clarifies that new lines of business include “any new activity exercised which, although it may be permissible, has not been exercised by the institution.” It also specifies the content of the filing, including information regarding whether the institution’s primary federal regulator has accepted the institution’s capital restoration plan, and whether the institution has implemented that plan.

Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The section specifies the content of the filing, including information regarding the acceptance and implementation of the institution’s capital restoration plan.

Although section 38 and other sections of subpart K of part 303 by their terms apply to all insured depository institutions, § 303.204, in part, and § 303.205 apply by their terms only to insured State nonmember banks and insured branches of foreign banks. The FDIC proposes to revise §§ 303.204 and 303.205 to make those sections expressly apply to State savings associations to the same extent as they do to insured State nonmember banks. Those sections would be revised to add “insured State savings associations.”

D. *Section 303.249 – Management official interlocks*

Part 348³¹ of the FDIC regulations implements the Deposit Insurance Management Interlocks Act (Interlocks Act).³² The purpose of the Interlocks Act and part 348 are to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations when the management interlock likely would have an anti-competitive effect.³³ The Interlocks Act is applicable to both insured State nonmember banks and State savings associations, and part 348 applies to management officials of FDIC-supervised institutions and their affiliates. With regard to insured State nonmember banks and State savings associations, the Interlocks Act provides the FDIC with administrative and enforcement authority under section 3206, as well as authority to prescribe regulations to carry out the Interlocks Act.³⁴

Under section 13(k) of the FDI Act, and notwithstanding any provision of State law, the FDIC may authorize dual service that would otherwise be prohibited by the Interlocks Act upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, and that such authorization would lessen the risk to the FDIC.³⁵ Subpart F of part 390 does not apply to a transaction under section 13(k) of the FDI Act.³⁶

³¹ 12 CFR 349.

³² 12 U.S.C. 3201-3208.

³³ 12 CFR 349.1(b).

³⁴ 12 U.S.C. 3206, 3207.

³⁵ 12 U.S.C. 1823(k)(1)(A)(v).

³⁶ 12 CFR 390.100(b)(1).

As discussed above, the FDIC transferred various OTS regulations into FDIC regulations. One of the transferred OTS regulations governed OTS oversight of management official interlocks in the context of State savings associations. The OTS regulation, formerly found at 12 CFR part 563f, was transferred to the FDIC with only minor, nonsubstantive changes, and was found in the FDIC's regulations at 12 CFR part 390, subpart V (part 390, subpart V), entitled "Management Official Interlocks." Before the transfer of the OTS regulations and continuing today as noted above, the FDIC's regulations contained part 348. After review and comparison of part 390, subpart V, and part 348, effective January 20, 2016, the FDIC rescinded part 390, subpart V, because the FDIC found it to be substantially redundant to existing part 348, considering technical conforming edits to part 348.³⁷

However, § 303.249 of the FDIC regulations addresses the "procedures to be followed by an insured State nonmember *bank* (emphasis added) to seek the approval of the FDIC to establish an interlock pursuant to" the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations.³⁸ The FDIC proposes to revise § 303.249(a) to insert, following "bank" in the language quoted immediately above, "or an insured State savings association." The revision would clarify that State savings associations may use the procedures contained in § 303.249 to apply for approval to establish interlocks as provided therein.

³⁷ 80 FR 79252 (Dec. 21, 2015).

³⁸ 12 CFR 303.249(a).

VI. Expected Effects

As of March 31, 2020, the FDIC supervised 3,309 depository institutions, of which 35 (1.1 percent) were State savings associations.³⁹ The proposed rule would primarily affect regulations that govern State savings associations. As previously discussed, the proposed rule would, if adopted, rescind part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, principally part 303. Additionally, the proposed rule would amend certain elements of part 303 so that the provisions are applicable to State savings associations. In doing so, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary. As such, the FDIC does not believe the proposed rule will have substantive effects on State savings associations.

Section 390.100 sets forth application processing procedures for State savings associations. However, existing statutes⁴⁰ and regulations already “prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing”⁴¹ for FDIC-supervised institutions, including State savings associations. Therefore, rescinding § 390.100 is not expected to have any substantive effects on State savings associations.

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. State savings associations are already subject to substantively similar requirements in §§ 303.2(r) and 303.11(c), as well

³⁹ Call Report data, March 2020.

⁴⁰ 12 U.S.C. 1831a.

⁴¹ 12 CFR 303.1.

as the substantive subparts of part 303 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.102 addresses the computation of time periods for State savings associations. State savings associations are subject to regulations that address the computation of relevant time periods at § 303.4 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.103 addresses pre-filing meetings and FDIC contacts for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed in the Applications Procedures Manual (APM), in which a substantively similar description of pre-filing meetings is given. Additionally, the APM states that a Case Manager will be assigned by the FDIC to the application in order to facilitate communication and engagement with the applicant. Therefore, the FDIC believes that rescinding § 390.103 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.104 addresses certain requirements for business plans submitted by State savings associations under subpart F, which permits the FDIC to require additional business plan information during processing of the filing. Under part 303, business plans are required for certain filings, though the FDIC may request additional information for any filing. In this regard, the FDIC's review processes include, as appropriate, pre-filing and other activities to ensure institutions' understanding of the FDIC's filing requirements and information needs. In certain cases, the content for business plans is addressed in filing forms or other FDIC resources. For example, the Inter-agency Charter

and Deposit Insurance Application Form contains detailed instructions for the development of the business plan; and those instructions may assist institutions when submitting business plans as part of other filings. The FDIC has also provided a Handbook for Organizers – Applying for Deposit Insurance, which aids all applicants for deposit insurance and includes sections on developing a business plan and business plan content. Generally, the FDIC believes it is appropriate to provide an institution with flexibility to tailor the content of the business plan to reflect its unique circumstances, strategies, and challenges. Therefore, in light of the discussion above, the FDIC believes that rescinding § 390.104 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.105 addresses expedited and standard processing, as well as waiver requests for State savings associations. Expedited and standard processing, as well as waiver requirements, are encompassed in FDIC regulations applicable to State savings associations found throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.105 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.106 addresses the content of filings for State savings associations. It directs State savings associations to the applicable forms and the content requirements. The required content of filings is encompassed in FDIC regulations applicable to State savings associations throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.106 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.107 addresses application confidentiality for State savings associations. FDIC regulations found at § 303.8 of the FDIC regulations and applicable to FDIC-supervised institutions, including State savings associations, includes confidential treatment regulations that are substantively similar to those in § 390.107. Therefore, the FDIC believes that rescinding § 390.107 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.108 addresses where to file applications, specifically providing regional office addresses. General application filing procedures for all FDIC-supervised institutions, including State savings associations, are encompassed in regulations found at § 303.3 of the FDIC regulations. Further, although specific regional office addresses are not included in the regulation, they are available on the FDIC's public website. Therefore, the FDIC believes that rescinding § 390.108 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.109 explains the application filing date. The FDIC does not have substantively similar regulations governing the filing date of an application. However, FDIC regulations operate on the basis of the date on which a substantially complete filing is submitted. Further, the FDIC's APM, which is accessible to all FDIC-supervised institutions, including State savings associations, addresses the date on which an application is considered to be substantively complete. Therefore, the FDIC believes that rescinding § 390.109 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.110 discusses amending or supplementing an application. The FDIC does not have substantively similar regulations governing amending or supplementing an

application. However, the FDIC relies on determinations as to when an application is substantially complete. In addition, the FDIC's APM, which is applicable to all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete, as well as how to supplement information. Further, the APM states that an applicant may modify and update an application throughout the review process until final disposition, and that applicants often supplement their applications throughout the review process. Therefore, the FDIC believes that rescinding § 390.110 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.111 through 390.115 address public notice requirements. FDIC-supervised institutions, including State savings associations, are subject to substantively similar public notice requirements in § 303.7 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.111 through 390.115 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.116 through 390.120 address procedures for submission of public comments. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding procedures for submission of public comments in § 303.9 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.116 through 390.120 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.121 through 390.125 contain meeting procedures. Meetings are addressed generally in FDIC regulations found at 12 CFR 303.6 and 12 CFR 303.10 for FDIC-supervised institutions, including State savings associations. Although §§ 303.6 and 303.10 of the FDIC regulations are generally less specific than §§ 390.121 through 390.125, the FDIC believes the language in § 303.6 is generally inclusive of the substance of §§ 390.121 through 390.125, by stating that “[t]he FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.” Therefore, the FDIC believes that rescinding §§ 390.121 through 390.125 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding expedited treatment in § 303.11(c) of the FDIC regulations, as well as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that rescinding § 390.126 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.127 and 390.128 addresses application completeness. The FDIC does not have corresponding regulations addressing application completeness. Instead, the application processing time periods under part 303 are triggered by the FDIC’s

receipt of a substantially complete filing.⁴² The FDIC believes that the substantially complete filing step of part 303 enables the procedures for processing a filing under part 303, while essentially addressing the same issues, to be simpler and easier to navigate than those of §§ 390.127 and 390.128. Sections 303.3 and 303.11(e) of the FDIC regulations, as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete. Therefore, the FDIC believes that rescinding §§ 390.127 and 390.128 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. Under § 303.6 of the FDIC regulations, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that a separate eligibility determination provision is unneeded, and rescinding § 390.129 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.130 addresses potential FDIC requests for additional information or actions from applicants. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding potential FDIC

⁴² 12 CFR 303.304.

requests for additional information or actions from applicants through various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.130 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.131 explains requirements to publish new public notices. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding publishing new public notices in § 303.7(f) of the FDIC regulations. Therefore, the FDIC believes that rescinding § 390.131 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.132 addresses suspension of an application. Part 303 has no such provision. However, the FDIC believes that situations envisioned by § 390.132 can either be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Therefore, the FDIC believes that rescinding § 390.132 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.133 addresses the applicable review period for an application. The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. Thus, while part 303 addresses review periods in a different manner than subpart F, the FDIC believes that the substantive effect is similar and that rescinding § 390.133 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the

applicant, in writing, of its decision. If the FDIC does not act under paragraph (a)(1) of the section, the application is deemed approved. The FDIC's part 303 procedures do not contain such a requirement for applications (as opposed to some notice filings).

However, when read in conjunction with § 390.133, the FDIC has significant, though not complete, discretion under subpart F to extend the review period or applications until a determination is issued. The substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. As such, the application review periods and notification procedures for State savings associations are subject to substantively similar requirements under both subpart F and part 303. Therefore, the FDIC believes that rescinding § 390.134 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.135 addresses withdrawal if an application is not acted on within two calendar years. The FDIC does not have substantively similar regulations addressing withdrawal if an application is not acted on. However, the FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, states that the FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. Additionally, the FDIC has established timeframes for processing each type of filing, which have been published in Financial Institution Letter 81-2018.⁴³ It is also, generally, the FDIC's practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. Therefore, the FDIC believes that rescinding § 390.135 is unlikely to have any substantive effects on State savings associations or future applicants.

⁴³ www.fdic.gov/news/financial-institution-letters/2018/fil18081.html.

The proposed rule would amend certain elements of part 303, specifically §§ 303.7(c)(1)(i) and 303.15(b)(1) - (4), so that the provisions are applicable to State savings associations. In so doing, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The proposed rule would amend §§ 303.204 and 303.205 of part 303's subpart K (Prompt Corrective Action). Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The proposed rule would make these sections applicable to State savings associations. The provisions of section 38 of the FDI Act,⁴⁴ which establishes the statutory authority for §§ 303.204 and 303.205, contain the restrictions at issue and are applicable to all insured depository institutions. Thus, the proposed rule should not have a material impact on State savings associations.

Section 303.249 of the FDIC regulations addresses the “procedures to be followed by an insured State nonmember bank to seek the approval of the FDIC to establish an interlock pursuant to” the Interlocks Act, section 13(k) of the FDI Act, and part 348 of

⁴⁴ 12 U.S.C. 1831o.

the FDIC regulations. The proposed rule would amend § 303.249(a) to apply to State savings associations. Although the proposed amendment would set forth more explicit requirements for State savings associations seeking approval for establishing an interlock, State savings associations would not realize any effects because they are already subject to the Interlocks Act, and part 348. Therefore, State savings associations would currently need to undertake similar procedures, and provide substantively similar information, to those outlined in § 303.249.

By removing duplicative or unnecessary regulations, the FDIC believes that the proposed rule will benefit State savings associations by clarifying regulations and improving the ease of references.

VII. Alternatives

The FDIC has considered alternatives to the rule, but believes the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred to the FDIC certain powers, duties, and functions formerly performed by the OTS. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate and might later, as appropriate, rescind, amend, or incorporate the regulations into other FDIC regulations.

The FDIC has evaluated the existing regulations related to Application Processing Procedures. The FDIC considered the status quo alternative of retaining the current regulations, but believes it would be procedurally complex and unnecessary for FDIC-supervised institutions to continue to refer to the separate sets of regulations. Therefore, the FDIC is proposing to amend and rescind the regulations.

VIII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following question:

Question 1: *What impact, if any, do you foresee in the FDIC's proposal to rescind subpart F and amend certain sections of part 303? Please substantiate your response.*

Written comments must be received by the FDIC no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

IX. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed rule would rescind and remove from FDIC regulations subpart F and make technical revisions to certain sections of part 303. The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.⁴⁵ However, a regulatory flexibility analysis is not required if the agency

⁴⁵ 5 U.S.C. 601, *et seq.*

certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the Federal Register together with the rule. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million.⁴⁶ Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2020, the FDIC supervised 3,309 insured depository institutions, of which 2,548 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations.⁴⁷ There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.⁴⁸

As previously discussed, the proposed rule would, if adopted, rescind part 390, subpart F, because most of its elements are duplicative of substantively similar provisions

⁴⁶ The SBA defines a small banking organization as having \$600 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

⁴⁷ FDIC Call Report, March 31, 2020.

⁴⁸ *Id.*

of FDIC regulations, specifically part 303. Additionally, the proposed rule would amend §§ 303.7(c)(1)(i) and 303.15(b)(1) - (4) of part 303 so that the provisions are applicable to State savings associations. In doing so, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The proposed rule would amend §§ 303.204 and 303.205 to make the provisions applicable to all insured depository institutions, including small, State savings associations. The revisions to §§ 303.204 and 303.205 provide a procedure for State savings associations to apply to the FDIC for relief from the restrictions of section 38 of the FDI Act.⁴⁹

Finally, the proposed rule would amend § 303.249(a) to make the provisions applicable to all insured depository institutions, including small, State savings associations. The FDIC believes that this proposed amendment will not have any substantive effects on small, State savings associations because it will not result in any substantive change in the procedures for, or content associated with seeking approval for establishing an interlock. Thus, the FDIC does not believe the proposed rule will substantially impact small, FDIC-supervised institutions or future applicants.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Question 2: The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

⁴⁹ 12 U.S.C. 1831o.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁵⁰ requires each Federal banking agency to use plain language in all of its proposed and final regulations published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind subpart F and make technical revisions to certain sections of part 303 in a simple and straightforward manner.

Question 3: *The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.*

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.⁵¹ The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as subpart f, this proposal complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

⁵⁰ Pub. L. 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

⁵¹ Pub. L. 104–208, 110 Stat. 3009 (1996).

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR parts 303 and 390 as follows:

PART 303—FILING PROCEDURES

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1463, 1467a, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p-1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601-1607.

2. Revise § 303.7(c)(1) to read as follows:

§ 303.7 Public notice requirements.

* * * * *

(c) * * *

(1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) In the case of an application for deposit insurance for a de novo depository institution, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director;

(v) The address of the appropriate FDIC office where comments may be sent (the same location where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart; and

(vii) That the nonconfidential portions of the application are on file in the appropriate FDIC office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

* * * * *

3. Revise § 303.15(b) to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

* * * * *

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms “stockholder” and “shareholder” includes an owner of any interest in a depository institution chartered as an LLC, including a member or participant;

(2) The term “director” includes a manager or director of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of a director of a corporation;

(3) The term “officer” includes an officer of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms “voting stock,” “voting shares,” and “voting securities” includes ownership interests in a depository institution chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

4. Revise § 303.204 to read as follows:

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured State nonmember bank, any insured State savings association, and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

5. Revise § 303.205(a) to read as follows:

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured State nonmember bank, insured State savings association, or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured State nonmember bank, any insured State savings association, or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

* * * * *

6. Revise § 303.249(a) to read as follows:

§ 303.249 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured State nonmember bank or an insured State savings association to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)) and part 348 of this chapter.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

7. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart G also issued under 12 U.S.C. 2810 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601-3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart F—[Removed and Reserved]

8. Remove and reserve subpart F, consisting of §§ 390.100 through 390.135.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about September 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

BILLING CODE 6714-01-P

[FR Doc. 2020-21000 Filed: 10/14/2020 8:45 am; Publication Date: 10/15/2020]